

## **A NEW AND EXCITING OPTION FOR TENNESSEE BROWNFIELDS SITES**

### **Division of Remediation Voluntary Cleanup Oversight and Assistance Program**

#### **“Innocent Party” (T.C.A. 68-212-224) Agreements**

The Division of Remediation’s new “Innocent Party” Agreement (“IPA”) provides the most protection in a cleanup agreement available from the Department of Environment and Conservation. Thanks to the actions of the 2001 General Assembly, the Division can offer “innocent parties” an upfront agreement that gives liability protection and assures that a site is safe for future uses. The following benefits are available through this new program:

- Upfront agreement with the Division on what will be required for site closure;
- Liability protection from all TDEC regulatory programs;
- A negotiated apportioned liability as it pertains to generators and other responsible parties;
- Protection for third party lawsuits;
- Agreement from the state’s regulatory experts that a property is safe for future uses;
- Produces a 42 U.S.C. §9613(f)(4) (“CERCLA”) settlement;
- Flexibility on the amount of the VOAP entry fee; and
- Respect and appreciation for the interest of the innocent party.

The intent of the IPA is to return sites with known or suspected contamination to limited or full use. The IPA will address liability for past contamination that otherwise tends to limit the use of Brownfield sites.

#### **Who can apply?**

Anyone who did not generate, transport, or release contamination at the site may apply to enter the program. Even landowners who may be considered to be "liable parties" under the State and Federal Superfund laws qualify as "innocent parties" under this program if they did not generate, transport, or release contamination at the site.

#### **What will it cost?**

The Department requires that financial assessments be paid to recover actual costs associated with its oversight. The Department has established flat rates for cost recovery for oversight expenses incurred during the different steps of investigation and remediation. On complex sites which require more than 150 hours of staff time the participating party will be responsible for a per hour personnel rate.

**What is necessary to apply?**

The Division encourages applicants to seek qualified legal counsel and environmental consultant expertise in preparing an IPA. The Division provides guidance on the process of preparing an IPA that can be downloaded on the Division of Remediation web site at [http://state.tn.us/environment/dor/doc/voap\\_agreement.doc](http://state.tn.us/environment/dor/doc/voap_agreement.doc). The IPA must be accompanied by a summary description of all known existing environmental investigations, studies, reports, or documents concerning the site's environmental conditions. The applicant and counsel will also be requested to submit a proposed legal agreement for consideration. A model legal agreement is also available downloading at the url listed above.

**Will extensive risk assessments, lengthy investigations, records of decision, and/or cleanups to unrealistic clean up goals be required?**

It is the intent of the Division to avoid the "traditional" superfund process to the maximum extent possible in negotiating agreements with "innocent parties". The Division has extensive experience in directing cleanups across Tennessee and is willing to use this experience to assist applicants to shorten the path to project completion. Where it is obvious to all parties what is necessary at a site, the Division will avoid unnecessary and costly steps.

**Will the Division help pay for site cleanup?**

On a site where liability is apportioned and an true orphan share exists, the Division may participate in cleanup. At present this participation would be through the use of state contracted consultants, with the other party(ies) to the voluntary agreement paying the non-orphan share costs. Where a property is unlikely to be cleaned up because of a large orphan share, the Division is willing to consider use of the fund again with state contractors doing the work.

**Will public notice be required?**

The Department is committed to giving Tennessee citizens information on its environmental decisions. The Division is sensitive to the high cost associated with publication of notices in the major newspapers and will work with applicants to accomplish the necessary public notice at the least cost.

**What if I am not an innocent party?**

State law allows the Commissioner to enter a consent order with any person wishing to voluntarily cleanup a site. The Department is appreciative of individuals willing to proceed with cleanup without having action directed by an enforcement order. The Division of Remediation welcomes responsible parties to make application for a VOAP consent order.

For more information, contact Andy Shivas at 615-532-0912 or by email at [andy.shivas@state.tn.us](mailto:andy.shivas@state.tn.us). A copy of the Innocent Party Agreement can be obtained at this link <http://www.state.tn.us/environment/dsf/voap>.